

Illinois Department of Agriculture – Medical Cannabis Pilot Program

Frequently Asked Questions

2-18-15

Please Note: All references to the Act refer to the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/1 et. seq.) and all references to the Department rules refer to the Compassionate Use of Medical Cannabis Pilot Program regulations found at 8 Ill. Adm. Code Part 1000.

Who will be administering the registration for the program?

The Department of Agriculture will be awarding up to 22 permits to grow and cultivate.

The Department of Financial and Professional Regulation will be issuing up to 60 permits to dispense.

The Department of Public Health will be in charge of the patient and caregiver registry.

Where can I get a copy of the Act?

You find the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130, the “Act”) on the Illinois General Assembly’s website at:

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3503&ChapterID=35>.

Is it currently legal to grow medical cannabis in Illinois?

No. It is not legal at this time for anyone within the State of Illinois to be growing cannabis for any purpose. Only licensed cultivation centers will be allowed to grow cannabis under Illinois law. Growing cannabis for any purpose is still illegal under federal law.

Can I put my name on a list of individuals interested in growing cannabis?

No.

Will I be able to grow cannabis at home when the program is implemented?

No, unlike some other states, the Compassionate Use of Medical Cannabis Pilot Program Act (“the Act”) does not permit home-grow of cannabis. Only a registered cultivation center will be allowed to grow medical cannabis.

I would like to apply for a Cultivation Center permit. How do I proceed?

Once available, the application will be posted on the [Department of Agriculture’s website](http://agr.state.il.us) (agr.state.il.us) and the [Medical Cannabis Pilot Program’s website](http://mcpp.illinois.gov) (mcpp.illinois.gov). Please read the administrative rules to familiarize yourself with the program components and check with Medical Cannabis Pilot Program website for additional application instructions.

What are the fees associated with applying for a cultivation permit?

\$25,000 nonrefundable application fee for a cultivation permit. If issued a cultivation center permit, \$200,000 permit fee for the first year, \$100,000 annually thereafter. All other fees can be found in Administrative Rules Section 1000.140.

How can I pay my application fee?

Certified Check or Money Order payable to the Illinois Department of Agriculture.

How will the Department make sure that the applications are reviewed fairly and impartially?

Department of Agriculture will have a review committee in place, considering de-identified applications on a merit based system that is detailed in the Department's Administrative Rules and in the Application materials.

How soon will the Department issue award permits?

Timing on the permit selection will greatly depend on the amount of applications the Department receives.

I was told that the application document would be posted online 30 days prior to the application window opening, but have heard the window might have changed to 15 days prior to the application window opening?

The application will be posted online prior to the Department accepting applications. We anticipate accepting cultivation center applications from September 8 through September 22, 2014. Once the application submission window begins, the Department will allow 14 days for applicants to submit all required materials.

Will an applicant need to have firm funding commitments that will be effective post-licensure? Will those types of agreements be viewed as compliant with application requirements or does all funding need to be held in an escrow account?

Section 1000.40 (1) (B) in the Department of Agriculture's rules states the applicant has 15 business days after being awarded a permit to provide a copy of the \$2,000,000 bond to the Department of Agriculture. They must demonstrate the ability to do so in their application.

Can a company applying for more than one cultivation license use the same research plan for both licenses, or should there be a separate research plan for each license?

The Department does not have a position on what level of information an applicant chooses to include in their application. It is the applicant's responsibility to provide the best possible application for review.

I have 20 acres of property to be used for a cultivation center, could I split off 5 acres of that and use it and build a separate building and place a dispensary on that parcel next to the cultivation center?

Section 1000.220 of the Department of Agriculture's rules states a cultivation center and dispensary are required to be at least 1,000 feet apart. However, Section 1000.70 allows for a variance from this rule when certain requirements in the rule are met.

What if no qualified applicant applies in an ISP district, will the Department re-open the application phase?

Yes.

Will the Department notify applicants when their application is denied?

Yes. The Department of Agriculture will send notification to the applicants who are denied.

Will the Department allow applicants to apply for ISP District 15 if we believe we located a plot of land on the Illinois Tollway that would work?

Applications to operate a cultivation center in ISP District 15 will be evaluated the same as applications for all other districts.

Do the rules address where initial seeds/clones can come from?

No.

Can a cultivation center sell excess cannabis to other cultivation centers?

No. Cultivation centers can only sell cannabis products to dispensaries.

Can cultivation centers sell compost made from waste cannabis?

No. All cannabis waste must be rendered unusable and transported to a solid waste facility for final disposition. Please see section 1000.460 in the Department of Agriculture's rules for more information.

Can I operate a Cultivation Center and a Dispensary Organization?

Yes. An applicant may have ownership in up to three (3) cultivation centers and five (5) dispensaries. For further information please see Section 1000.40 (d) in the Department of Agriculture's rules, and Section 1290.40 (13) in the Department Financial and Professional Regulation's rules.

Will we need to use a specific IT vendor or system?

The administrative rules state the cultivation centers will need to use an inventory system that is compatible with the system the state procures. The state has not yet selected a vendor for product tracking purposes.

Will we need to use a specific security vendor/system?

No. The administrative rules do not require a cultivation center to use a specific security vendor or system. It will be the responsibility of the cultivation center to have the best security possible for their business.

I am applying for more than one cultivation center permit. Do I need to provide verification of \$500,000 liquid assets and \$2,000,000 in bond or escrow for each application?

Yes. The financial requirements were developed to provide proof of financial responsibility for the operation of a single Cultivation Center. Each Center is looked at as a unique entity and therefore the funds would need to be verified and available for each center.

I am having trouble securing a surety bond. Does the Department of Agriculture have a list of institutions that will issue surety bonds for \$2,000,000?

There is a list of institutions licensed with the State of Illinois to issue surety bonds posted on the Program's website. However, each institution has discretion as to whether to issue a surety bond to cultivation centers.

The definition of "area zoned residential" is an area zoned "exclusively residential." If the local municipality provides a letter that its zoning districts located within 2500 feet of a cultivation center are not zoned "exclusively" residential because in addition to residential uses, the zoning districts allow for other uses such as churches, parks, schools, utility substations, and/or other planned uses including commercial uses, will that satisfy this requirement?

Yes, but the applicant must verify setback regulations are also met, located in Department of Agriculture Administrative Rules section 1000.40(e). The Department will rely heavily on the local zoning authority's approval.

If a town only has one area that meets the zoning and setback requirements for a cultivation center can they wait until the permits are issued and lease the land to the company with a permit?

Yes. The zoning authority will need to provide written verification the property meets the requirements of the Act and rules with the application.

Can our zoning be in process when we submit an application?

Yes. The application will include a zoning form where the applicant can provide verification of completed zoning or a statement from the local zoning authority stating the zoning is in process.

Will the state allow the “variances” rules to be used for the 2,500 foot distance?

No. The 2,500 foot distance is mandatory based on Section 105 of the Medical Cannabis Pilot Program Act.

Do I need a zoning approval letter in my application?

You will need to provide verification of zoning approval or a statement provided in the application from the local zoning authority verifying the zoning process is underway and the property meets all requirements set forth in the act and rules.

How does the Department of Agriculture approve a testing laboratory?

A laboratory wishing to test medical cannabis will apply with the Department and provide verification they are accredited by a private laboratory accrediting organization. Applications will be posted on this website when they are available.

Will the Department have its own lab? How many private independent labs will there be?

Yes, the Department of Agriculture will have a lab to test samples of cannabis collected at cultivation centers. Private independent labs wishing to test cannabis can apply with the Department of Agriculture when forms are available. For more information on Laboratory testing and requirements please see the Department of Agriculture Administrative Rules, section 1000.500.

Will veterans receive a preference in the permit selection process?

Bonus Points are available for organizations that employ or are owned by Veterans. 1000.110 (c)(1) (b) and 1000.110 (c) (7)

Your Administrative Rules say the Illinois State Police (“ISP”) needs to review all security plans before application submission. Is this necessary?

The applicant must submit their security plan with their application. The Department will work with ISP to make sure a full security review is completed.

I want to add more security than your rules say is mandatory. Will I receive fewer points on the application if I go beyond the rules?

No. The rules serve as a broad outline of the program and its features. It is up to the applicant to be innovative and provide the best business and security plan possible in the application process. Applicants are encouraged to exceed the minimum requirements where possible.

How will Cannabis be transported from Cultivation Centers to Dispensary Organizations?

Each Cultivation Center will hire Cultivation Center Agents, subject to background checks, to transport cannabis from the Cultivation Center to the dispensaries. Each Cultivation Center will provide the

Department of Agriculture with a transportation plan that adheres to the rules located in section 1000.430

A product has to be packaged from cultivation center to dispensary, does this mean that it has to be maintained in that package or can it be repackaged at the dispensary?

All products must be packaged and labeled before transport to a dispensary. Please refer to the Department of Financial and Professional Regulation's administrative rules regarding product handling.

"All applicant's principal officers and producer backers expressly agree to be subject to service of process in Illinois with a current Illinois address on file with the Department". Does this mean the cultivation center must be located in Illinois as well as all officers and backers?

Cultivation centers will be permitted based on Illinois Police District and need to be physically located in the District they are permitted to grow in. Owners and backers do not need to live in the state of Illinois.

If a physician commits to giving up his or her license to practice in the State of Illinois, can we include him in our application?

The Act defines "Physician" as a doctor of medicine or doctor of osteopathy licensed under the Medical Practice Act of 1987 to practice medicine and who has a controlled substances license under Article III of the Illinois Controlled Substances Act. Therefore, if the individual is NOT licensed under the Medical Practice Act of 1987 to practice medicine, then he/she can be included in the application.

In the definition of "usable cannabis," it mentions that the roots and stocks are unusable. There are many studies linking the juicing of cannabis roots and stocks. If a cultivation center were to juice the stocks and roots is that admissible under these rules?

This would be an example of a cannabis-infused product which may be produced under the Act and rules.

Do background checks need to be done by livescan or can they be done by fingerprint card?

All fingerprints need to be collected at a livescan vendor licensed by the Illinois department of Financial and professional Regulation. A list of vendors can be found at this website: <https://www.idfpr.com/licenselookup/fingerprintlist.asp>. Please bring the Fingerprint consent form with you to the vendor, complete, and return with your application.

Is the Department permitting out of state residents to submit fingerprints to the ISP through fingerprint cards you send in the mail?

No. All fingerprints must be obtained in the State of Illinois from a livescan vendor licensed through the Department of Financial and Professional regulation.

Is there a specific bond form that the Illinois Department of Agriculture is requiring the bond to be created on and if so would you be able to send me a copy of the bond form? If there is not a specific bond form, would a standard license and permit bond form be acceptable at this time for the surety bond?

The Department has developed a bond form to make the insurance process easier. If the applicant chooses to use the bond as its evidence of financial responsibility, it must use this form. Please see the form section for a copy of the surety form.

What portions of the application will be accessible to the public via a website or FOIA request, specifically will the names, addresses and financial information of the applicants, producer backers, or any entity with a direct or indirect pecuniary interest in the center be accessible to the public?

No. Section 145 of The Act provides that information in the application received by the Department is subject to all applicable federal privacy laws, is confidential, exempt from the Freedom of Information Act and not subject to disclosure to any individual or public or private entity except among the licensing agencies and with law enforcement for the enforcement of the provisions of the Act.

Can a cultivation center "donate" compost or use compost in a Community Development Program to build community gardens and farms?

No. Compost must be disposed of in the manner described in the Department of Agriculture Administrative Rules, 1000.460(g).

I would appreciate verification on the requirements for Substance Abuse Programs for Cultivation Centers and whether the program must be based or located within the district being applied for, or if programs in other districts throughout the state would also be considered for bonus points.

It is the applicant's responsibility to provide the best application possible to the department. It is up to the applicant to decide what type of substance abuse program, if any, they choose to include in their application.

Can you tell me whether there is any prohibition for a Cultivation Facility being located in a B-2 Community Retail District vs., for example, being located in an I-1 Industrial District?

Please check with your local zoning authority for questions regarding local zoning regulations.

Could you please point me in the right direction to find the security regulations for permitted growing operations?

Please see Department of Agriculture Administrative rules Section 1000.445 and 1000.450.

The Department rules indicate the cultivation center needs to notify the Department in the case of theft/loss, provide manifests, and gain approval for visitors. Do you have an appropriate phone number and email address we can use and incorporate into our security, operations, and employee manuals?

The department will provide all needed phone numbers and addresses to permitted cultivation centers.

Assuming a Doctor is not and will not be recommending medical marijuana to patients nor have interest direct or indirect interest in a facility that does. Can they be on an advisory committee, with NO compensation or consideration of any kind.

The Act prohibits a physician from serving on the board of directors or as an employee. The rules however permit a cultivation center to hire a physician as an independent contractor limited exclusively for the purpose of designing or conducting non-proprietary medical research or studies. The Act and the rules are silent on a physician participating on an advisory board without compensation. See Section 1000.40(b)(10) and (11) of the rules.

What information other than the cultivation center name and content list can be on the Label? Can a cultivation center label medical Cannabis for a dispensary?

The rules outlined in section 1000.420 are in place to prevent medical cannabis from resembling foods available for non-medical human consumption or that are attractive to children. The labeling should be straight forward and make the consumer aware this is a medical product. The label for a medical Cannabis product must include the registered product name. The Department has no objection to a cultivation center placing information about the dispensary on the label.

Who needs to be fingerprinted in the application process?

All cultivation center agents are required to be fingerprinted, which includes a, principal officer, board member, employee or agent of a cultivation center. See Sections 1000.210 and 1000.300.

Can a qualifying patient be a producer backer of a cultivation center?

Yes, there is no specific prohibition against that in the Act or rules. Such a qualifying patient would have to be disclosed in the cultivation center application. Additionally, the rules state that a qualifying patient cannot grow or cultivate medical cannabis other than as a cultivation center agent, meaning a qualifying patient can work at a cultivation center. Section 1000.50 (b)(7).

Can ownership of a cultivation center be by a trust if the beneficiary(s) are under 21 years of age?

Such a situation would be judged on a case by case basis, depending upon the terms of the trust and how much control and benefit is available to the beneficiary while under 21. If the under 21 year old beneficiary would qualify as a principal officer or board member of the cultivation center, such ownership would be prohibited under the Act and the rules.

Does a producer backer have to file tax returns for the last 3 years or just the most recent filing?

Unless a producer backer who has a direct or indirect financial interest in the cultivation center, is also a principal officer, only the most recent tax filing is required by Section 1000.200(a)(8), (9).

Can a cultivation center operate a surveillance system that is at least comparable to, if not better than, a closed-circuit television (CCTV) surveillance system required by Section 1000.445 of the rules, if the system also meets the listed minimum standards?

Yes. Technology is ever changing and a system that meets at a minimum the listed standards will be accepted. It is up to the applicant to put forth its best plan in all areas of the application.

Is there any other documentation acceptable to the Department attesting to the existence of at least \$500,000 in liquid assets under the control of the applicant, besides a signed statement from an Illinois Licensed CPA?

Yes. In addition to the CPA statement required in Section 1000.100(d)(21) of the rules, the Department will accept a signed statement from a Financial Institution authorized to do business in Illinois.

Each independent lab is to be accredited by a private laboratory accrediting organization. How will the labs know which accrediting organization to use?

The Department recommends an interested lab reach out to labs that are currently testing cannabis in other states to gather information about the process and accrediting organizations. The lab should then contact the Department for approval. The Department will be posting a lab approval application in the near future. Please check the Medical Cannabis Pilot Program website for the update.

What type of physical facility does the AGR require or prefer to locate a cultivation center for cannabis to be grown?

Cultivation centers must be enclosed, locked facilities. Please see 410 ILCS 130/10(k) of the Compassionate Use of Medical Cannabis Pilot Program Act. Additionally, the rules of the Department in various sections set forth the requirements of the proposed facility.

Is the program application requiring shovel ready plans (complete construction documents) with the application or are concept plans with the parameters listed in the 'draft' acceptable?

All plans for the cultivation center must comply with the requirements of Sections 1000.100(d)(19) and (20) and Section 1000.220. Also see Section 1000.40(g) which requires that proof of financial responsibility, in part, is to insure that construction of the proposed cultivation center and commencement of production must take place within 6 months after the issuance of a permit.

I do not see any reference to MEP engineering (Mechanical, Electrical, Plumbing, Fire Protection). Will this level of detail be required within the application, or will elevation drawings be the extent of engineering which will be required?

Please see Department of Agriculture Administrative rules sections, 1000.400 (j)(8), 1000.400 (j)(9) and 1000.40(h) and 1000.220(b).

Before product including edibles can be packaged and labeled and sent to a dispensary does it have to be tested by an Independent Lab approved by the State? Can the product be tested but while waiting for results still shipped to a dispensary and if there is an issue than a recall would be constituted?

Each batch of cannabis is to be made available by the cultivation center for an employee of an approved lab to select a random sample for testing by the lab. Each cannabis product is required to be packaged and labeled by the cultivation center prior to being sold to a dispensary. If the cannabis product is derived from a batch of cannabis that was sampled by the independent lab, the label is required to include identification of the independent testing laboratory and the date of final testing and packaging. Qualified patients will thus be able to identify those cannabis products that came from batches of cannabis that were sampled and tested. Please see Sections 1000.420 and 1000.510.

Assuming a Doctor is not and will not be recommending medical marijuana to patients nor have a direct or indirect interest in a facility that does, can the doctor own a percentage of a cultivation company (as long as they don't sit on a board of directors, or hold titles such as president, ceo etc)?

Yes. As long as the physician does not recommend the use of medical cannabis to qualified patients or is not in partnership or other fee or profit sharing relationship with a physician who does recommend medical cannabis, a physician can hold a direct or indirect economic interest in the cultivation center. By owning a percentage of the cultivation center the physician would have an economic interest in the center. See Section 1000.40(b)(10).

Additionally, a physician may not serve on the board of directors or as an employee of a cultivation center. See Section 1000.40(b)(11).

Will an applicant-entity receive less bonus points by having the entity incorporated in Delaware as opposed to Illinois, even if an entity's headquarters and operations are located in Illinois and the entity is qualified to do business in Illinois?

1000.110(c)(8) states: Verification that the applicant's principal place of business is headquartered in Illinois. The names, addresses and verification of the applicant's proposed agents that reside in Illinois. The applicant may also provide a plan for generating Illinois-based jobs and economic development. There is no requirement that the entity be incorporated in Illinois.

Does the state have an approved surety bond form that can be used as proof of financial security?

Yes. Since the proof of financial responsibility relates to both the construction of the cultivation center and the production of medical cannabis, 2 bond forms have been created.

The first bond form covers the construction of the cultivation center, is in the amount of \$2,000,000 and becomes null and void upon completion of the construction of the cultivation center and the commencement of production of medical cannabis.

The second bond form covers the production of cannabis and does not become effective unless and until the first bond becomes null and void. It is in the amount of \$1,500,000 because the rules provide for a reduction of the required proof of financial responsibility, in \$500,000 increments, upon achieving certain milestones, the first one being completion of construction and the commencement of production.

Since the second bond form does not become effective until the first bond becomes null and void, the total surety bonding liability remains \$2,000,000, not \$3,500,000.

It is also noted that proof of financial responsibility may also be submitted in the form of an escrow account in a chartered financial institution in Illinois. See Sections 1000.40(g) and 1000.60.

What terms must be included in the escrow agreement?

Although the Department will not be providing a sample escrow agreement, the following terms must be included in any escrow agreement submitted to the Department pursuant to the rules:

1. Escrow Agent shall not return any money in the escrow account to Permittee or a representative of Permittee unless Permittee or its representative presents a written statement issued by the Department indicating that the account, or any amount thereof, may be released.

2. Written consent of Escrow Agent to act in the capacity of escrowee shall be manifested upon the duly authorized execution of this Agreement. At the Illinois Department of Agriculture's ("Department") discretion, statements indicating the status of the escrow account shall be furnished by Escrow Agent to the Department.

3. THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the Department determines, after a hearing pursuant to Section 1000.700 of the rules of the Department (8 Ill. Adm. Code 1000.700), that the Permittee has failed to: (1) timely and successfully construct a cultivation center that is fully operational and commence production of medical cannabis as provided for in the permit application of the Permittee within six (6) months after the date of issuance of the permit; or (2) maintain production for any reason for more than ninety (90) consecutive days after it has completed construction of the facility; or (3) provide an uninterrupted supply of medical cannabis to licensed dispensaries during the term of the license, as provided for in Sections 1000.40(g) and 1000.240 of the rules of the Department (8 Ill. Adm. Code 1000.40(g) and 1000.240), then the Escrow Agent shall immediately make payment of the above escrow amount, or any amount remaining in the escrow account, to the Department. The total sum of the escrow amount shall be reduced by \$500,000 upon the successful achievement of each of the following milestones by the Permittee, as provided for in Section 1000.60 of the rules of the Department (8 Ill. Adm. Code 1000.60):

- a) A determination by the Department that the cultivation center is fully operational and able to commence production of cannabis as provided for in the permit application of the cultivation center;
- b) A determination by the Department that the cultivation center remained operational without substantial interruption, was able to provide an uninterrupted supply of medical cannabis to licensed dispensaries and operated without any violation of the Act or the rules for a one year period;
- c) A determination by the Department that the cultivation center remained operational without substantial interruption, was able to provide an uninterrupted supply of medical cannabis to licensed dispensaries and operated without any violation of the Act or the rules for two consecutive years; and
- d) A determination by the Department that the cultivation center remained operational without substantial interruption, was able to provide an uninterrupted supply of medical cannabis to licensed dispensaries and operated without any violation of the Act or the rules for three consecutive years.

FURTHERMORE, THE CONDITIONS OF THIS ESCROW ACCOUNT ARE SUCH THAT if:

1. The Department determines that the cultivation center has timely and successfully met its obligation to construct a cultivation center that is fully operational and has commenced production of medical cannabis as provided for in the permit application of the Permittee within six (6) months after the date of issuance of the permit, remained operational without substantial interruption, was able to provide an uninterrupted supply of medical cannabis to licensed dispensaries and operated without any violation of the Act or the rules for three consecutive years; or
2. The Permittee voluntarily chooses not to renew the permit and provides notice of this decision to the Department in accordance with 8 Ill. Adm. Code 1000.600; or
3. Should the sunset provision of the Act, found in Section 220 of the Act (410 ILCS 130/220), take effect and no successor medical cannabis program be in place allowing for the continuation of cultivation centers as provided for in the Act and the rules, provided the cultivation center is not in violation of the Act or the rules,

then, the obligation of the bond shall be null and void. Until such time, it shall remain in full force and effect.